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December 11, 2002

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
455 12th Street, S.W.
Washington, DC 20554

Re: Notice of Ex Parte Presentation
WT Docket No. 98-100

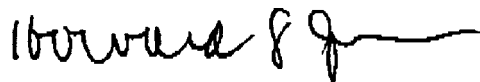
Dear Ms. Dortch:

On December 10, 2002, on behalf of AT&T Wireless Services, Inc., I provided the attached paper to Bryan Tramont, senior legal advisor to Chairman Powell, via electronic mail.

Pursuant to section 1.1206(b)(1) of the Commission's rules, a copy of this letter is being filed electronically with the Office of the Secretary. A copy is also being served electronically on Mr. Tramont.

Any questions regarding the foregoing may be directed to the undersigned.

Respectfully submitted,



Howard J. Symons

cc: Bryan Tramont

The Commission Should Forbear from Applying the Telephone Operator Consumer Services Improvement Act (TOCSIA) to Wireless Carriers

TOCSIA regulates the activities of operator service providers (OSPs) (common carriers that provide operator services) and aggregators (persons or entities that make telephones available to the public or to transient users for interstate telephone calls using a provider of operator services).^{1/} Some wireless carriers may fall within the definition of OSPs (when they offer manual roaming, for instance), but the competitive nature of the wireless marketplace and other material differences from the wireline market that gave rise to TOCSIA warrant FCC forbearance from applying many of the TOCSIA requirements to CMRS providers.^{2/}

➤ **CMRS Providers Should Not Be Required To Oversee Aggregators of Their Services**

- TOCSIA was aimed at preventing abuses by OSPs that held a monopoly in the operator services market through exclusive arrangements with hotels and payphone operators. CMRS providers do not have the same kind of contractual relationships with entities who might be deemed “aggregators” under TOCSIA, such as rental car agencies, hotels, airline carriers, and special event organizers who rent wireless phones to their customers. The FCC’s resale obligation can create a situation in which a CMRS provider may be unaware that its services are being resold for mobile public phone use.
- The disclosure obligations imposed on aggregators by TOCSIA and the FCC are sufficient safeguards to protect consumers.^{3/}
- Unlike monopoly OSPs, CMRS providers face formidable competition and have every incentive to act in ways to retain customers.^{4/}

^{1/} See generally 47 U.S.C. § 226(a); 47 C.F.R. § 64.708.

^{2/} In 1998, the Commission forbore from applying the equal access and information tariff filing requirements of TOCSIA to wireless providers. See *Personal Communications Industry Association’s Broadband Personal Communications Services Alliance’s Petition for Forbearance for Broadband Personal Communications Services*; *Biennial Regulatory Review - Elimination or Streamlining of Unnecessary and Obsolete CMRS Regulations*; *Forbearance from Applying Provisions of Communications Act to Wireless Telecommunications Carriers*; *Further Forbearance from Title II Regulation for Certain Types of Commercial Mobile Radio Service Providers*; *GTE Petition for Reconsideration or Waiver of Declaratory Ruling*, WT Docket No. 98-100, GN Docket No. 94-33, MSD-92-14, 13 FCC Rcd 16857, ¶ 75 (1998) (“*TOCSIA Forbearance Order and NPRM*”).

^{3/} See generally 47 U.S.C. § 226(c)(1); 47 C.F.R. § 64.703(b).

^{4/} See generally *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Seventh Report, FCC 02-179 (released July 3, 2002) (“*FCC Seventh Competition Report*”) (noting introduction and expansion of innovative pricing plans, which reduce prices for consumers and provide consumers with large buckets of both local and long distance minutes).

- Requiring CMRS providers to enter into contractual arrangements with aggregators that would be needed to enable a wireless carrier to satisfy the requirements of TOCSIA would be unduly burdensome and provide little benefit to consumers.

➤ **Call Splashing Prohibitions Are Unnecessary in the Mobile Context.**

- It is inherent in the nature of CMRS that there is no fixed geographic location for originating calls, and therefore point of call origination has little meaning in the mobile context.
- Consumers would not be harmed by call splashing in the CMRS context because most wireless providers do not charge distance-sensitive toll rates.
- Imposing call splashing obligations on CMRS carriers would be tantamount to imposing an equal access requirement, an obligation from which CMRS providers are specifically exempted.^{5/}
- CMRS providers cannot target users of aggregated services for call splashing because CMRS providers have no way of distinguishing a rental phone from a private phone.
- Given the competitive nature of the wireless market, CMRS providers have little incentive to engage in call splashing that would harm consumers.^{6/}

➤ **CMRS Providers Are Already Subject To Elaborate Emergency Services Rules.**

- The application of TOCSIA's emergency service rules to CMRS providers is unnecessary given the extensive and specific E911 obligations now imposed on CMRS carriers.^{7/}

➤ **The Competitive CMRS Market Obviates the Need for Publication of Changes Under TOCSIA.**

- Requiring the publication of service changes is similar to requiring the filing of tariffs or informational tariffs. The Commission has forborne from applying those requirements to CMRS providers both generally and in the TOCSIA context.^{8/}
- Setting forth the rates, terms, and conditions of wireless service offerings are not necessary because "in a competitive market, market forces are generally sufficient to

^{5/} 47 U.S.C. § 332(c)(8).

^{6/} See generally *FCC Seventh Competition Report*.

^{7/} See, e.g., 47 C.F.R. § 20.18.

^{8/} See *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, Second Report and Order, 9 FCC Rcd 1411, ¶ 173 (1994) ("CMRS Second Report and Order"); *TOCSIA Forbearance Order and NPRM* ¶ 75.

ensure the lawfulness of rate levels, rate structures, and terms and conditions of service set by carriers who lack market power.”^{9/}

- CMRS providers have the incentive to advertise their services and provide customers with service information upon request as a matter of sound business practice.

➤ **Forbearance is Appropriate Under Sections 10 and 332 of the Act.**

- To the extent the Commission determines these TOCSIA obligations apply to CMRS providers, the Commission should exercise its forbearance authority under sections 10 and 332 of the Act.
- The imposition of these requirements on CMRS carriers is not necessary to protect consumers or assure just and reasonable rates, give the competitive nature of the wireless marketplace.
- Compliance with these TOCSIA requirements may be impossible in some instances.
- Forbearance from these TOCSIA obligations will promote competitive market conditions.

^{9/} CMRS Second Report and Order ¶ 173.